

PATENT
Customer No. 22,852
Attorney Docket No. 10587.0280-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Kenneth CARBONE <i>et al.</i>)	Group Art Unit: 2415
)	
Application No.: 09/582,297)	Examiner: Ramy M. OSMAN
)	
Filed: June 3, 2002)	
)	
For: ASYNCHRONOUS DATA)	Confirmation No.: 1661
PROTOCOL)	

Attention: Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Pursuant to 37 C.F.R. § 41.41, Appellants present this Reply to the Examiner's Answer dated April 29, 2010. This Reply Brief is being timely filed within two months of the Examiner's Answer.

I. Grounds of Rejection

In response to the Appeal Brief filed on March 15, 2010, in the Examiner's Answer, the Examiner has maintained the rejection of claims 1-27 and 37-60 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Number 6,963,923 to Bennett ("Bennett"). Appellants submit that the rejections should be reversed and that the pending claims are allowable over the prior art of record.

II. Response to Examiner's Arguments in the Answer

In addition to the remarks presented in Appellants' Appeal Brief filed on March 15, 2010, Appellants provide the following remarks regarding the outstanding rejection and the Examiner's Answer ("Answer") mailed on April 29, 2010.

Independent claim 1 recites, *inter alia*, "transmitting a request for a data transfer session from a client device to a host, the request identifying a plurality of data objects to be transferred between the client device and the host." The cited art fails to disclose or suggest at least this element of claim 1.

As recited in claim 1, the request transmitted from the client to the host must "identify[] a plurality of data objects," such as individual files, "to be transferred between the client device and the host." Thus, it is the client that specifies the data objects to be transferred or downloaded. By contrast, in Bennett, a client sends a request to the server to download a single file and, in response, the server sends back a "profile" that describes all components comprising that file for subsequent transfer or download. Thus, in claim 1, the client makes the decision as to which objects to download or transfer and the server complies with that request. In contrast, in Bennett, the server

makes the decision as to which objects to download or transfer (by virtue of specifying the component parts of the requested file in the profile) and the client complies with that response by following and making requests according to the profile.

In the Examiner's Answer, the Examiner conceded that, in Bennett, the client does not identify the plurality of data objects to be transferred between the client device and the host or server, but rather the server identifies the plurality of objects and informs the client of the same:

At the time of initially requesting the profile, the client need not know how many components are part of the file. The client only needs to know the name of the profile so that the server can inform the client of the multiple components that make up the profile.

Answer, at 7 (emphasis added). Nonetheless, the Examiner's Answer contends that by sending the initial request for the profile, "the client is indirectly and ignorantly identifying the multiple components that are to be downloaded." *Id.*

It is difficult to understand how a client could "ignorantly identify[]" objects. Under the reasoning presented in the Examiner's Answer, a client could seemingly "ignorantly identify[]" any object by simply requesting a file. The reasoning in the Examiner's Answer is also improper since it essentially reads the above-highlighted limitations of claim 1 out of existence. The plain language of claim 1 requires that the "request ... from [the] client device to [the] host ... identif[ies] a plurality of data objects to be transferred between the client device and the host."

The rejection based on Bennett is also improper because it assumes that it is unimportant which device, the client or the server, identifies the data objects to be downloaded. As explained in the Appellant's specification, for example, when the client

receives a webpage from a host, that webpage may itself reference a number of additional data objects, such as embedded images, that also need to be requested from the host in order to render the webpage. Appellant's Specification, at 9. The client sends a request to the host that identifies the multiple images or other objects, and in response, the host sends data frames for each of the objects identified by the host in an interleaved fashion. Appellant's Specification, at 16-17. This approach allows the client to download and progressively render all images in a webpage simultaneously and at a uniform rate. Thus, by choosing which and how many embedded objects to request for simultaneous or interleaved transmission, the client is able to control the process by which the webpage is rendered. Such control could not be exercised if instead it were the server that specified the objects that were to be downloaded by the browser, as permitted under the Examiner's incorrect reading of claim 1.

Moreover, as argued in Appellant's Appeal Brief, in claim 1, the request from the client to the host must not only "identify[] a plurality of data objects to be transferred between the client device and the host," but must also "request . . . a data transfer session." Bennett, teaches otherwise, as Fig. 4 of Bennett identifies data objects using transmissions that occur after initiation of the data transfer session between the client and the host. The Examiner's Answer attempts to rebut this difference by contending that "the claims make no mention of the argued 'after initiation', and makes [sic] no mention as to when the request is sent in relation to the 'initiation.'" Answer, at 7. However, Appellant did not argue that the claims contain any "after initiation" limitation. To the contrary, Appellant noted that Bennett teaches the identification of data objects after initiation of the data transfer session, and that this teaching is contrary to claim 1,

which requires that the request both identify a plurality of data objects and request a data transfer session at the same time.

For at least the foregoing reasons, the Board should reverse the rejection based on Bennett at least because the Examiner has not properly construed the claims and has ignored the differences that exist between independent claim 1 and the cited art. Because of these errors, and the deficiencies of Bennett, the Examiner has not demonstrated that claim 1 is anticipated under 35 U.S.C. § 102.

Independent claims 10, 17, 37, 45, and 51, though of different scope from claim 1, recite elements similar to those set forth above for claim 1 and are therefore allowable for at least reasons similar to those presented above with respect to claim 1. Dependent claims 2-9, 11-16, 18-27, 38-44, 46-50, 52-60 are also allowable at least due to their respective dependence from the independent claims.

III. Conclusion

Accordingly, for the reasons stated herein, and those provided in Appellants' Appeal Brief, Appellants respectfully submit that the rejection of claims 1-27 and 37-60 is in error and should be reversed.

If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, please charge such fees to our Deposit Account No. 06-0916.

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Respectfully submitted,

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Dated: June 29, 2010

By: /s/ C. Gregory Gramenopoulos
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